

1 JANE DOE  
2 11151 Valley Blvd #4886,  
3 El Monte, CA 91734  
4 626-208-9665  
5 Plaintiff in Pro Se

**FILED** 5  
APR - 9 2020  
SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTH DISTRICT OF CALIFORNIA

JD

6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **CV20 2432**  
11 No.

11 JANE DOE,

12 Plaintiff,

13 v.

14 CITY OF CONCORD; COUNTY OF  
15 CONTRA COSTA; COUNTY OF  
16 SONOMA; GUY SWANGER; TAMRA  
17 ROBERTS; CODY HARRISON;  
18 RENELLE-REY VALEROS; DIANA  
19 BECTON; CHRISTOPHER WALPOLE;  
20 COLLEEN GLEASON; JILL RAVITCH;  
21 ANNE MASTERSON; LAURA  
22 PASSAGLIA; and DOES 1 - 10, inclusive,

23 Defendants.

**COMPLAINT FOR DAMAGES AND  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**JURY TRIAL IS HEREBY DEMANDED**

24  
25 Plaintiff JANE DOE ("Plaintiff") alleges and complains the following, on information and  
26 belief except for information identified as being based on personal knowledge, which allegations  
27 are likely to have evidentiary support after a reasonable opportunity for further discovery.  
28

**INTRODUCTION**

29 1. This is a civil rights complaint for damages and declaratory and injunctive relief  
30 arising from Defendants' violations of Plaintiff's fundamental rights to be free from  
31 discrimination, among others guaranteed by the United States Constitution, California

1 Constitution, and California laws. Defendants violated these rights when they conspired and  
2 practiced discriminatory under-policing and selective under-enforcement against rape victims,  
3 including Plaintiff.

4 2. This action stems from law enforcement personnel's response to a heinous crime -  
5 rape. This action is about the discriminatory practice and ill will of law enforcement personnel,  
6 their betrayal of public trust, and failure to protect residents from victimization by rapists. Our  
7 law enforcement's response to rapes sends a catastrophic message to the whole of our society. To  
8 rape victims: bringing a complaint is useless. To rapists: you're allowed to rape as many women  
9 as you want and there will be no consequence!

10 3. Plaintiff's constitutional injuries have occurred since the first minute she came into  
11 contact with law enforcement personnel who were supposed to support and protect her. Plaintiff  
12 was not only a rape victim but also a victim of discrimination, uneven enforcement of law, and  
13 law enforcement personnel's misconduct.

14 4. Without the ability to hold law enforcement accountable for its responses, rape  
15 victims, including Plaintiff, will be far too likely to face hostility, disinterest, and concrete harms  
16 as a result of their interactions with law enforcement. The people who mishandle rape cases are  
17 just as bad as the perpetrators themselves because they are perpetuating rapes.

18 5. Plaintiff has been injured by Defendants' willful refusal to provide the  
19 accommodations, advantages, privileges, and facilities of an unbiased and adequate sexual assault  
20 investigation, and effective prosecution. Plaintiff has endured multiple traumas; first, the criminal  
21 assault itself; second, a discriminatory, unconstitutional, unfair, and unequal treatment by the  
22 people sworn to protect the public - the government officials and actors who have instead  
23 discredited, dismissed, and denigrated Plaintiff as a rape victim; and finally, the additional trauma  
24 of watching her case and hope for justice languish and ultimately vanish, due to the sabotage,  
25 inaction and refusal to act by law enforcement personnel. Plaintiff's attacker will not see a day of  
26 consequence for his violent assault against her and it was a byproduct of the law enforcement in a  
27 discriminatory manner.

28 6. As described in more detail below, Defendants' (a) actions, (b) patterns of

1 behavior, (c) history of decision-making, and (d) departures from normal procedures in the course  
2 of their response to sexual assaults, demonstrate ongoing, intentional discrimination against rape  
3 victims, including Plaintiff. Specifically, Defendants have committed constitutional violations by  
4 implementing, promoting, or maintaining policies, practices, and/or customs that:

- 5 a. Refuse to implement and/or ignore proper training and supervision of  
6 government employees handling sexual assault cases;
- 7 b. Allocate more resources to other violent crimes than to sexual assaults;
- 8 c. Refuse to treat rape victims' testimony as evidence;
- 9 d. Credit suspects' account over victims' version of story;
- 10 e. Fail to arrest and charge known perpetrators of sexual assault, which resulted  
11 in extremely low arrest and prosecution rate compared to other crimes;
- 12 f. Disproportionately refuse to thoroughly investigate sexual assault cases;
- 13 g. Disproportionately refuse to prosecute perpetrators of sexual assault;
- 14 h. Traumatize Plaintiff in the course of her interactions with Defendants by,  
15 among other things, refusing to treat her testimony as adequate evidence  
16 regarding lack of consent;
- 17 i. Subject Plaintiff and other rape victims to future assaults by known  
18 perpetrators by failing to act on, investigate, and prosecute prior sexual  
19 assaults;
- 20 j. Treat sexual assault cases with less urgency and importance than is afforded to  
21 other types of violent crimes;
- 22 k. Treat victims of sexual assault, including Plaintiff, with less respect and devote  
23 less attention to their cases than to cases of other crimes (collectively referred  
24 to herein as the "Policies").

25 7. Defendants' unconstitutional and discriminatory conduct subjects Plaintiff and  
26 other victims of sexual assault to continued risk at the hands of perpetrators who are never held  
27 accountable.  
28

**PARTIES**

8. Plaintiff, JANE DOE ("Plaintiff"), is a resident of County of Los Angeles, State of California. At all relevant and material times, Plaintiff was a visitor in the County of Sonoma and Contra Costa, State of California.

9. Defendant, City of Concord ("the City"), is a public entity and municipal corporation duly organized and existing under and by virtue of the laws of the State of California. Concord Police Department ("CONCORD PD") is an operating department of the City. The City is responsible for the training, policies, procedures, and actions of CONCORD PD and its employees. The City has direct supervisory authority over CONCORD PD and its officers, and CONCORD PD policies are City policies for purposes of municipal liability.

10. Defendant, County of Contra Costa ("Contra Costa County"), is an incorporated municipality organized and existing under the laws of the State of California and wholly located within the State of California. Contra Costa County District Attorney's Office ("CCDA") is an operating department of Contra Costa County. Contra Costa County is responsible for the training, policies, procedures, and actions of CCDA and their employees. Contra Costa County has direct supervisory authority over CCDA and their personnel, and CCDA policies are County policies for purposes of municipal liability.

11. Defendant, County of Sonoma ("Sonoma County"), is an incorporated municipality organized and existing under the laws of the State of California and wholly located within the State of California. Sonoma County District Attorney's Office ("SDA") is an operating department of Sonoma County. Sonoma County is responsible for the training, policies, procedures, and actions of SDA and their employees. Sonoma County has direct supervisory authority over SDA and their personnel, and SDA policies are County policies for purposes of municipal liability.

12. Defendant CONCORD PD Officers/personnel: At all times herein mentioned, Plaintiff is informed and believes, and thereon alleges that individual Defendants Chief of Police Guy Swanger ("Swanger"), Detective Renelle-Rey Valeros, ID 505 ("Valeros"), Sergeant Cody Harrison, ID 335 ("Harrison") and Lieutenant Tamra Roberts, ID 422 ("Roberts"), were residents

1 of Contra Costa County and were civilian employees, agents and/or representatives of  
2 CONCORD PD. At all times relevant hereto, said Defendants were acting within the course and  
3 scope of their employment as officers, lieutenants, detectives, and/or civilian employees of  
4 CONCORD PD, a department and subdivision of Defendant City of Concord. At all times  
5 relevant herein, said Defendants were acting under color of law, under the color of statutes,  
6 ordinances, regulations, policies, customs, practices and usages of the City, CONCORD PD,  
7 and/or the State of California. At all times relevant hereto, Plaintiff alleges Swanger served as the  
8 highest official for CONCORD PD and made the City and CONCORD PD policy for that office.  
9 As Chief of Police, Swanger holds the command and policy making position with regards to  
10 CONCORD PD.

11 13. Defendant CCDA Officials: At all times herein mentioned, Plaintiff is informed  
12 and believes, and thereon alleges that individual Defendant District Attorney Diana Becton  
13 (“Becton”) is an elected public official. Individual Defendants Assistant District Attorney  
14 Christopher Walpole (“Walpole”), and Deputy District Attorney Colleen Gleason (“Gleason”),  
15 were residents of Contra Costa County and were civilian employees, agents and/or representatives  
16 of CCDA. At all times relevant hereto, said Defendants were acting within the course and scope  
17 of their employment as civilian employees of CCDA, a department and subdivision of Defendant  
18 Contra Costa County. At all times relevant herein, said Defendants were acting under color of  
19 law, under the color of statutes, ordinances, regulations, policies, customs, practices and usages of  
20 Contra Costa County, CCDA, and/or the State of California. At all times relevant hereto, Plaintiff  
21 alleges Becton served as the highest official for CCDA and made the County and CCDA policy  
22 for that office.

23 14. Defendant SDA Officials: At all times herein mentioned, Plaintiff is informed and  
24 believes, and thereon alleges that individual Defendant District Attorney Jill Ravitch (“Ravitch”)  
25 is an elected public official. Individual Defendants Chief Deputy District Attorney Anne  
26 Masterson (“Masterson”), and Deputy District Attorney Laura Passaglia (“Passaglia”), were  
27 residents of Sonoma County and were civilian employees, agents and/or representatives of SDA.  
28 At all times relevant hereto, said Defendants were acting within the course and scope of their

1 employment as civilian employees of SDA, a department and subdivision of Defendant Sonoma  
2 County. At all times relevant herein, said Defendants were acting under color of law, under the  
3 color of statutes, ordinances, regulations, policies, customs, practices and usages of Sonoma  
4 County, SDA, and/or the State of California. At all times relevant hereto, Plaintiff alleges Ravitch  
5 served as the highest official for SDA and made the County and SDA policy for that office.

6       15.     **CCDA and SDA Officials are not immune to this suit.** “Prosecutorial immunity  
7 only protects the defendants from [§] 1983 damage claims; it does not protect them from suits for  
8 injunctive relief.” Gobel, 867 F.2d at 1203 n.6. To determine whether particular actions warrant  
9 absolute immunity, courts apply a “functional approach.” *Buckley v. Fitzsimmons*, 509 U.S. 259,  
10 269 (1993). This approach “looks to ‘the nature of the function performed, **not the identity of the**  
11 **actor who performed it[.]’” Id. (quoting Forrester v. White, 484 U.S. 219, 229 (1988)).**  
12 “Absolute immunity ‘is an extreme remedy, and it is justified only where any lesser degree of  
13 immunity could impair the judicial process itself.’” *Garmon v. Cty. of Los Angeles*, 828 F.3d 837,  
14 843 (9th Cir. 2016) (quoting *Lacey v. Maricopa Cty.*, 693 F.3d 896, 912 (9th Cir. 2012) (en  
15 banc)). See also *Brooks v. Clark Cty.*, 828 F.3d 910, 915–16 (9th Cir. 2016) (discussing absolute  
16 immunity). “[T]he official seeking absolute immunity bears the burden of showing that such  
17 immunity is justified for the function in question.” *Burns*, 500 U.S. at 486. “The presumption is  
18 that qualified rather than absolute immunity is sufficient to protect government officials in the  
19 exercise of their duties.” Id. At 486-87. The purpose of absolute immunity is to eliminate  
20 susceptibility to legal actions that would inhibit prosecutors from aggressively prosecuting cases.  
21 When prosecutors fail to perform their duties, provide favoritism to suspects, and act in their own  
22 interest this Court should reject their absolute immunity. The following actions by CCDA and  
23 SDA Officials are neither prosecutorial in nature nor decisions of judgment but deplorable  
24 intentional antithesis of exercise of judgment:

- 25           a. Adopt “no policy” policy for prosecution of rape which suggests deliberate  
26           indifference to rape victims safety and a general disinterest in prosecuting sexual  
27           assaults due to bias. The lack of written policy allows CCDA and SDA Officials to  
28           make wholly arbitrary decisions and is the moving force behind Plaintiff’s

1 constitutional injuries;

- 2 b. When asked to adopt “offender-focused approach” and “expert witness strategy”  
3 that are recommended by National District Attorneys Association (“NDAA”)  
4 CCDA and SDA Officials maliciously refused, giving an ostensible reason that the  
5 case cannot be proved beyond a reasonable doubt and falsely told Plaintiff that  
6 jury would not believe expert witness. Bias against rape victims could not be  
7 clearer; <Prosecuting Alcohol-Facilitated Sexual Assault>  
8 ([http://atixa.org/wordpress/wp-](http://atixa.org/wordpress/wp-content/uploads/2014/04/pub_prosecuting_alcohol_facilitated_sexual_assault.pdf)  
9 [content/uploads/2014/04/pub\\_prosecuting\\_alcohol\\_facilitated\\_sexual\\_assault.pdf](http://atixa.org/wordpress/wp-content/uploads/2014/04/pub_prosecuting_alcohol_facilitated_sexual_assault.pdf)),  
10 <Cold Case Alcohol- and Drug-Facilitated Sexual Assault>  
11 ([https://www.sakitta.org/toolkit/docs/Cold-Case-Alcohol-and-Drug-Facilitated-](https://www.sakitta.org/toolkit/docs/Cold-Case-Alcohol-and-Drug-Facilitated-Sexual-Assault.pdf)  
12 [Sexual-Assault.pdf](https://www.sakitta.org/toolkit/docs/Cold-Case-Alcohol-and-Drug-Facilitated-Sexual-Assault.pdf)), <Understanding the non-stranger rapist>  
13 ([http://www.ncdsv.org/images/NDAA\\_UnderstandingNonstrangerRapist\\_TheVoic](http://www.ncdsv.org/images/NDAA_UnderstandingNonstrangerRapist_TheVoice_vol_1_no_11_2007.pdf)  
14 [e\\_vol\\_1\\_no\\_11\\_2007.pdf](http://www.ncdsv.org/images/NDAA_UnderstandingNonstrangerRapist_TheVoice_vol_1_no_11_2007.pdf))  
15 c. Willfully refuse to perform their duties pursuant to professional standards;  
16 d. Intentionally and consistently credit the suspect’s version over Plaintiff’s account  
17 because she is a rape victim, notwithstanding objective evidence;  
18 e. Callously disregard victim and community safety by using absolute immunity as a  
19 badge and shield for their discriminatory practice with no showing of a valid state  
20 interest;  
21 f. Deter Plaintiff from pursuing truth and justice by falsely telling her that there was  
22 not enough evidence and creating purported reasons to justify their discriminatory  
23 and unconstitutional treatment to Plaintiff because she is a woman reporting rape;  
24 g. Falsely told Plaintiff there was no corroboration, despite corroboration is not  
25 required by law for conviction; ([https://aequitasresource.org/wp-](https://aequitasresource.org/wp-content/uploads/2018/09/Model-Response-to-Sexual-Violence-for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf)  
26 [content/uploads/2018/09/Model-Response-to-Sexual-Violence-for-Prosecutors-](https://aequitasresource.org/wp-content/uploads/2018/09/Model-Response-to-Sexual-Violence-for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf)  
27 [RSVP-An-Invitation-to-Lead.pdf](https://aequitasresource.org/wp-content/uploads/2018/09/Model-Response-to-Sexual-Violence-for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf))  
28 h. Made multiple untrue statements to Plaintiff that were far departure from

1 professional standards, jury instruction, and prosecution guidelines which is a  
2 strong indicator that discriminatory intent was a motivating factor for CCDA and  
3 SDA Officials' wild spread custom;

- 4 i. Act in their own personal interest to avoid losing at trial simply because rape cases  
5 are hard to win and they want their personal conviction rates look good (their  
6 powerful incentive to discriminate against rape victims);
- 7 j. Intentionally enforce a "non-law", maliciously requiring strong corroboration and  
8 physical evidence to establish rape, a requirement that is not required by law or  
9 jury instruction, reflecting higher criteria compared to other crimes with no  
10 showing of legitimate state interest but solely aiming at conviction rate for  
11 prosecutor's own personal interest;
- 12 k. Maliciously ignore the fact that a victim's testimony alone is legally sufficient  
13 evidence for filing charges but falsely told Plaintiff that there was no  
14 corroboration, reflecting rape cases are less "worthy" of prosecution than other  
15 crime cases;
- 16 l. Willfully provide favoritism and leniency towards rapists, including Weamer who  
17 attacked Plaintiff;
- 18 m. Intentionally use their control and influence to shut Plaintiff out of criminal justice  
19 system and reduce the number of perpetrators held accountable for sexual assaults;
- 20 n. Employ disparate unwritten policy to rape cases compared to other type of crimes;  
21 (In 2017 and 2018, CCDA's prosecution rate of rape is as low as 34% although  
22 few sex crimes referred for prosecution by police and sheriff. This compares to a  
23 higher rate at every stage for non-rape crimes, reflecting the lowest priority of  
24 CCDA's efforts. SDA has not been able to provide prosecution rate so far.)
- 25 o. Use "insufficient evidence" as a disguise to deprive Plaintiff of her constitutional  
26 rights;
- 27 p. Employ unconstitutional and discriminatory practice against sexual assault  
28 victims, including Plaintiff; and



g. Misuse their power to undermine the quality of justice.

16. Defendant DOES 1 through 10 are not known or identified at this time. On information and belief, Plaintiff alleges that each Doe is in some manner responsible for the wrongs alleged herein, and that each such Defendant advised, encouraged, participated in, ratified, directed, or conspired to do, the wrongful acts alleged herein. When the true names and capacities of said Defendants become known, Plaintiff will seek relief to amend this complaint to show their true identities in place of their fictitious names as DOES 1 through 10. Defendants, DOES 1 through 10, and each of them, were the agents, employees and servants of the City, Contra Costa or Sonoma County. Defendants DOES 1 through 10 acted in the course and scope of said agency, service and employment at all relevant times.

17. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated as a DOE is intentionally and negligently responsible in some manner for the events and happenings herein referred to, and thereby proximately caused injuries and damages as herein alleged.

18. Defendants, and each of them, did the acts and omissions hereinafter alleged in bad faith and with knowledge that their conduct violated well established and settled law.

19. All Defendants are sued in their official capacities for declaratory and injunctive relief as to all claims. All Defendants are also sued for damages arising from violations of 42 U.S.C. §§ 1983 and 1985, and for violations of state law and the California Constitution.

20. Defendants CONCORD PD Officers, CCDA and SDA Officials, and DOES 1 through 10 are also sued in their individual capacities for their violations of Plaintiff's constitutional and statutory rights.

## JURISDICTION AND VENUE

21. The Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, and 1367(a) because this action arises under the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §§ 1983 and 1985.

22. The Court may award damages and grant declaratory and injunctive relief for

1 constitutional violations pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 2201, and/or Federal Rules of  
2 Civil Procedure 57 and 65.

3 23. Venue is proper in this district under 28 U.S.C. § 1391(b) because the events that  
4 give rise to this action occurred within this district and the Defendants reside in this district and  
5 state.

### 6 7 **CONCORD PD POLICIES AND PROCEDURES**

8 24. At all relevant times, all CONCORD PD members were required to be apprised of  
9 the Fourteenth Amendment of the United States Constitution, and were required, at all times, to  
10 follow the United States Constitution, the laws of California and also to comply with CONCORD  
11 PD's Mission. CONCORD PD's Mission applies to all CONCORD PD members such as  
12 Defendant CONCORD PD Officers. Each member of CONCORD PD, including Defendant  
13 CONCORD PD Officers, is required to be familiar with CONCORD PD mission and must adhere  
14 to its directives.

15 25. CONCORD PD's Mission states "The members of the Concord Police  
16 Department are dedicated to providing the highest quality police services in order to enhance  
17 community safety, protect life and property, and reduce crime and the fear of crime. To do this,  
18 we pledge to develop a partnership with the community, lead a community commitment to  
19 resolve problems, and improve the safety and quality of life in our City."

20 (<https://www.cityofconcord.org/841/Department-Policy>)

21 26. Although providing the highest quality police services is CONCORD PD's  
22 mission no written policies relating to investigation of rape exists which suggests deliberate  
23 indifference to rape victims safety and a general disinterest in investigating sexual assaults due to  
24 bias and dismissive attitude.

### 25 26 **CRIMINAL PROSECUTION**

27 27. As the United States Supreme Court has explained, the prosecutor represents "a  
28 sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at

all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.” A prosecutor is held to a standard higher than that imposed on other attorneys because of the unique function he or she performs in representing the interests, and in exercising the sovereign power, of the state.

28. American Bar Association Criminal Justice Standards for the Prosecution Function: Standard 3-1.2 Functions and Duties of the Prosecutor (b) The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. Standard 3-4.4 Discretion in Filing, Declining, Maintaining, and Dismissing Criminal Charges (c) A prosecutor may file and maintain charges even if juries in the jurisdiction have tended to acquit persons accused of the particular kind of criminal act in question.  
([https://www.americanbar.org/groups/criminal\\_justice/standards/ProsecutionFunctionFourthEdition/](https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/))

29. In cases which involve a **serious threat** to the community, the prosecutor should not be deterred from prosecution by the fact that in the jurisdiction juries have tended to acquit persons accused of the particular kind of criminal act in question because prosecutors have an ethical obligation to pursue difficult cases for public safety reasons.

30. According to NDAA, rape cases rarely have physical evidence that conclusively proves that a rape occurred. The evidence need not **conclusively** prove that a rape occurred; rather, it must give the jury a sufficient **context** in which to evaluate the victim’s credibility.  
([http://atixa.org/wordpress/wp-content/uploads/2014/04/pub\\_prosecuting\\_alcohol\\_facilitated\\_sexual\\_assault.pdf](http://atixa.org/wordpress/wp-content/uploads/2014/04/pub_prosecuting_alcohol_facilitated_sexual_assault.pdf))

31. Physical evidence can prove that the intercourse happened, but not the absence of consent. When there’s no issue about who the assailant is DNA doesn’t really contribute anything. Victim’s reaction or whether or not victim stays contact with the perpetrator is not a crime element. It’s prosecutor’s duty to educate the jury the right way to identify whether or not a crime occurred.

32. CCDA declares that their office’s mission is to seek justice and enhance public safety for all their residents by fairly, ethically, aggressively and efficiently prosecuting those

1 who violate the law, and by working to prevent crime.

2 (<https://www.contracosta.ca.gov/7284/District-Attorney>)

3 33. SDA's mission statement indicates that "We shall seek truth and justice in a  
4 professional manner, while maintaining the highest ethical standards." ([http://da.sonoma-](http://da.sonoma-county.org/content.aspx?sid=1023&id=1379)  
5 [county.org/content.aspx?sid=1023&id=1379](http://da.sonoma-county.org/content.aspx?sid=1023&id=1379))

6 34. AEquitas is a national technical assistance provider that specializes in the  
7 prosecution of gender-based violence and human trafficking crimes. AEquitas is a nonprofit  
8 organization that brings decades of prosecution experience and collaborative approach to offer  
9 law enforcement advice and resources across disciplines at no cost. (<https://aequitasresource.org/>)

10 35. Corroboration is not required by law for conviction.  
11 ([https://aequitasresource.org/wp-content/uploads/2018/09/Model-Response-to-Sexual-Violence-](https://aequitasresource.org/wp-content/uploads/2018/09/Model-Response-to-Sexual-Violence-for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf)  
12 [for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf](https://aequitasresource.org/wp-content/uploads/2018/09/Model-Response-to-Sexual-Violence-for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf))

13 36. In 2018 in California the arrest rate of rape is as low as 16.4% while arrest rate of  
14 aggravated assault is 85.5%. ([https://data-openjustice.doj.ca.gov/sites/default/files/2019-](https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Crime%20In%20CA%202018%2020190701.pdf)  
15 [07/Crime%20In%20CA%202018%2020190701.pdf](https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Crime%20In%20CA%202018%2020190701.pdf))

### 16 17 **SEXUAL AND DOMESTIC VIOLENCE**

18 37. Five categories of sexual violence ([https://ndaa.org/wp-content/uploads/NDAA-](https://ndaa.org/wp-content/uploads/NDAA-DV-White-Paper-FINAL-revised-July-17-2017-1.pdf)  
19 [DV-White-Paper-FINAL-revised-July-17-2017-1.pdf](https://ndaa.org/wp-content/uploads/NDAA-DV-White-Paper-FINAL-revised-July-17-2017-1.pdf)):

- 20 a. Rape or penetration of victim;
- 21 b. Victim made to penetrate someone else;
- 22 c. Non-physically pressured unwanted penetration;
- 23 d. Unwanted sexual contact, defined as the "intentional touching of the victim or  
24 making the victim touch the perpetrator, either directly or through clothing . . .  
25 without the victim's consent";
- 26 e. Non-contact unwanted sexual experiences, defined as the "unwanted exposure  
27 to sexual situations (e.g., pornography); verbal or behavioral sexual  
28 harassment; threats of sexual violence to accomplish some other end; and /or

1 unwanted filming, taking, or disseminating photographs of a sexual nature of  
2 another person”.

3 38. Researches show that distorted thoughts is one of the main reasons women stay in  
4 abusive relationships. Being controlled and hurt is traumatizing, and this leads to confusion,  
5 doubts, and even self-blame. For example, women shared: “I believed I deserved it.” Others  
6 minimized the abuse as a way to cope with it, saying: “[I stayed] because I didn’t think that  
7 emotional and financial abuse was really abuse. Because words don’t leave bruises,” and,  
8 “Because I didn’t know what my boyfriend did to me was rape.”

9 ([http://www.ncdsv.org/images/Investigating%20and%20Prosecuting%20Intimate%20Partner%20](http://www.ncdsv.org/images/Investigating%20and%20Prosecuting%20Intimate%20Partner%20Sexual%20Assa....pdf)  
10 [Sexual%20Assa....pdf](http://www.ncdsv.org/images/Investigating%20and%20Prosecuting%20Intimate%20Partner%20Sexual%20Assa....pdf)); ([https://law.lclark.edu/live/files/17491-countering-common-](https://law.lclark.edu/live/files/17491-countering-common-misperceptions-of-sa-victims)  
11 [misperceptions-of-sa-victims](https://law.lclark.edu/live/files/17491-countering-common-misperceptions-of-sa-victims))

12 39. When NFL linebacker Ray Rice knocked his fiancée Janay Palmer unconscious in  
13 an elevator in 2014, it didn't initially get much attention. He was accused of domestic violence  
14 and suspended for two games. After a few weeks, he was formally charged, but he and Palmer  
15 were married the next day. A security video quickly went viral showing Janay Palmer knocked  
16 down and roughly dragged out of the elevator by Rice. Victim’s staying with their abuser does  
17 not erase the crime committed by the abuser.

18 40. Both rape and battery are domestic violence and they should be treated the same  
19 way. No law requires a victim breaking up with their attacker to establish battery or rape.  
20

### 21 **RAPE KIT BACKLOG**

22 41. In 2015 there were 2400 untested rape kit found in Contra Costa County.  
23 However, there was never ever any backlog of DNA testing for murder or other crimes.

24 42. The discriminatory practice against rape victims is long-standing, wildspread, and  
25 well settled. ([https://www.huffpost.com/entry/the-rape-kit-backlog-shows-exactly-how-we-](https://www.huffpost.com/entry/the-rape-kit-backlog-shows-exactly-how-we-regard-women-in-this-country_n_5acfb5e1e4b016a07e9a8c65)  
26 [regard-women-in-this-country\\_n\\_5acfb5e1e4b016a07e9a8c65](https://www.huffpost.com/entry/the-rape-kit-backlog-shows-exactly-how-we-regard-women-in-this-country_n_5acfb5e1e4b016a07e9a8c65) )  
27

### 28 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

1           43.     In 2013 Edward Weamer (“Weamer”) was a police officer at Sonoma University  
2 Police Department. In Nov 2013 via an online app “POF” Weamer friended Plaintiff and started  
3 chatting with her online.

4           44.     Before Plaintiff met Weamer in person she made a clear statement via text  
5 messages that she didn’t want to rush sex and insisted to stick to her traditional culture. Weamer  
6 agreed to respect Plaintiff so Plaintiff decided to meet him in person.

7           45.     Once Plaintiff met Weamer in person, he didn’t keep his words and forced himself  
8 on top of Plaintiff around ten times between 2013 and 2014.

9           46.     Via Plaintiff’s message conversations with Weamer he acknowledged that each  
10 time Plaintiff said no and resisted. Plaintiff also accused Weamer that he set her up but she was  
11 not able to recognize what Weamer had done to her was a crime due to her confusion about rape.  
12 Plaintiff mistakenly thought rape was a crime committed by a stranger. < Understanding and  
13 Countering Rape Myths >

14 ([https://www.nationalguard.mil/Portals/31/Documents/J1/SAPR/SARCVATraining/Barriers\\_to](https://www.nationalguard.mil/Portals/31/Documents/J1/SAPR/SARCVATraining/Barriers_to_Credibility.pdf)  
15 [Credibility.pdf](https://www.nationalguard.mil/Portals/31/Documents/J1/SAPR/SARCVATraining/Barriers_to_Credibility.pdf))

16           47.     In Aug 2014 Plaintiff broke up with Weamer and never had contact with him  
17 again. Over the years Plaintiff has been broken, and experienced depression, anxiety, and low  
18 self-esteem but she didn’t know where those came from until Oct 2019.

19           48.     In Oct 2019 Plaintiff met with LA County prosecutor Peter Cagney and he  
20 explained to Plaintiff what rape was. Plaintiff has realized what Weamer had done to her was in  
21 fact rape.

22           49.     Plaintiff finally gathered her courage to come forward on Oct 18, 2019. At the  
23 time she believed that coming forward would be her first step to heal and it was her moral  
24 obligation to report it to stop it. However, it turned out she was completely wrong and her life has  
25 been turned upside down.

26           50.     In 2013 Plaintiff was raped in Cotati. In 2014 Weamer raped Plaintiff in Concord.  
27 Plaintiff filed the police reports with Cotati Police Department (“Cotati PD”) and Concord PD  
28 respectively on Oct 18, 2019.

1           51.     After the initial report was filed on Oct 18, 2019 Cotati PD informed Plaintiff of  
2 victims rights and followed up with Plaintiff the following week. The case was subsequently  
3 submitted to SDA.

4           52.     After the initial interview with Concord PD Officer Shasta Vanetti on Oct 18,  
5 2019, the following month Plaintiff heard nothing from CONCORD PD, no follow-up and  
6 literally nothing.

7           53.     In November 2019 Plaintiff left voice mail to Detective Valeros but still heard  
8 nothing from CONCORD PD in the following month.

9           54.     In December 2019 after Plaintiff reached out to Sgt Harrison she finally got a  
10 phone call from Detective Valeros.

11          55.     Rather than ask relevant questions regarding crime elements the first thing Valeros  
12 wanted to confirm was "So are you still living in Southern California?" Perhaps he thought he  
13 could treat this case less seriously because the victim lived far away.

14          56.     Then Plaintiff was asked by Valeros what's her ultimate goal. Such humiliating  
15 and degrading question strongly suggests his discriminatory animus towards Plaintiff as a rape  
16 victim. Such question demonstrates that Valeros thought Plaintiff came forward for something  
17 else other than justice. A victim of other crimes would not be asked about their goal to come  
18 forward.

19          57.     Plaintiff was shocked to find out the suspect was not contacted nearly two months  
20 after she reported the crime.

21          58.     Despite there is no statute of limitations for rape Valeros told Plaintiff this  
22 happened five years ago. Even though Weamer admitted through texts that each time Plaintiff  
23 said no and resisted Valeros told Plaintiff he could not prove it was Weamer who was texting.

24          59.     No useful information was extracted during Plaintiff's conversation with Valeros.  
25 No question regarding the crime element was asked. The "investigation" conducted by Valeros  
26 was meaningless with respect to proving a crime. Instead, Valeros' language reflects how he  
27 deterred Plaintiff from pursuing the case.

28          60.     Despite pretext phonecall is a commonly used technique to obtain confession from

1 the offender Valero opt not to use it, not to mention he would not spend any effort finding out if  
2 there would be more women victimized by Weamer.

3 61. In December 2019 Plaintiff was really concerned by Valeros' attitude and she  
4 reached out to Sgt Harrison again. However, despite there is no statute of limitations for rape and  
5 physical evidence is not required by law or jury instruction, Harrison falsely announced to  
6 Plaintiff that the case was six years old and there was no physical evidence at all for filing  
7 charges. Harrison didn't stop there. He further falsely told Plaintiff that there was no indication of  
8 any type of sexual assault and appeared quite consensual which strongly suggests how  
9 CONCORD PD Officers deterred Plaintiff from pursuing justice and CONCORD PD Officers'  
10 discriminatory intent to discount and dismiss Plaintiff's allegation.

11 62. After the horrifying interactions with Valero and Harrison Plaintiff reached out to  
12 Lieutenant Roberts.

13 63. Despite victim's testimony is legally enough to file charges Roberts falsely told  
14 Plaintiff that her testimony was absolutely not enough and there was no evidence of sexual  
15 assault.

16 64. When there's no issue about who the assailant is DNA doesn't really contribute  
17 anything. Despite the suspect is known and admitted having sex with Plaintiff, despite what says  
18 on jury instruction, Roberts falsely told Plaintiff "There needs to be physical evidence, uh, either  
19 DNA evidence or a confession from the suspect. Um, and we don't have any of those things. In  
20 this case, there's no DNA evidence."

21 65. The crime of battery (e.g. a punch) is established based solely on the perpetrator's  
22 actions and/or intent. The victim's response to being punched is irrelevant. The victim need not  
23 resist nor express unwillingness to being punched to establish a crime, nor is a victim's history of  
24 being punched relevant. The relationship between the assailant and the victim does not make the  
25 crime less seriously or make the victim suffer less.

26 66. While Plaintiff pointed out that Weamer acknowledged each time Plaintiff said no  
27 and resisted but Roberts challenged Plaintiff "But then you got back together with him and  
28 continued." It's obvious that Roberts treat rape completely different from other crimes.



1           67.     There is no law requires victim act in certain way in order to prove she was raped.  
2     Roberts' stereotype about how victims should behave constitutes unlawful discrimination.  
3     Roberts' language also reflects her discriminatory intent to discredit Plaintiff and discard  
4     Plaintiff's allegation. Roberts' announcement left Plaintiff feeling coming forward was a  
5     punishment to herself and she should not have reported the incident to the police at all. Such  
6     victim blaming does not occur with other types of crimes. Moreover, according to Roberts' theory  
7     a man is entitled to rape a woman if they are in a relationship, suggesting a strong purposeful  
8     animus towards Plaintiff.

9           68.     Although victim's reaction is not a crime element Roberts twisted Plaintiff's  
10    account of story and announced to Plaintiff "You were okay with having sex." by ignoring how a  
11    victim would process trauma. Then Roberts falsely told Plaintiff the text messages would only  
12    work in the suspect's favor and there was no evidence of sexual assault.

13          69.     Battery and rape are both domestic violence. The law does not require a victim  
14    break up with the assailant to establish battery but Roberts told Plaintiff "This is a different  
15    situation. You continue to get together with him." Roberts imposed a non-law to require Plaintiff  
16    break up with the suspect to establish rape. Roberts flat out told Plaintiff "Most people, if they got  
17    raped, they wouldn't get together with that person again." Such remarks strongly suggest an  
18    intention to treat sexual assault cases less seriously than other assaults, as well as an animus  
19    against rape victims. Roberts' pro-defendant attitude is capable of several interpretations: perhaps  
20    he believed that men are always entitled to sex in a relationship, that Plaintiff was not entirely  
21    blameless because she stayed contact with the attacker, that such assault was less severe and  
22    traumatic because she was dating this suspect, or that state officials should not intrude upon  
23    dating violence. Whatever the reason, Roberts' language reflects an outdated misconception  
24    concerning rapes that cannot be used as a source of differential treatment. Roberts' statement also  
25    demonstrates her discriminatory intent to devalue Plaintiff's allegation.

26          70.     When Plaintiff pointed out rape should be treated the same way as battery Roberts  
27    responded "I don't think I can understand what you are saying."

28          71.     Regardless Plaintiff say no and resisted each time Roberts twisted it as sexual play.

1 Roberts also declared “A district attorney would have a very hard time convincing a jury of 11  
2 people.”

3 72. The language and attitude of CONCORD PD Officers suggests that they made  
4 minimal or maybe no effort to investigate the suspect in Plaintiff’s case. None has been done to  
5 see if there are more women victimized by the suspect. None has been done in order to support  
6 Plaintiff’s allegation.

7 73. Roberts went on and told Plaintiff “The district attorney's office won’t prosecute  
8 on a case like this.” “If we don't have any evidence, then we don't submit the case to the district  
9 attorney.” “It is here in Contra Costa County, the district attorney's office would never file a case  
10 like this. Um, I've been doing this for 18 years. I’ve worked sexual assault for five years. Um,  
11 they will never file a case like this.”

12 74. In December 2019 Plaintiff filed a complaint with Swanger but Plaintiff never  
13 received any investigation result.

14 75. CONCORD PD personnel did not inform Plaintiff of victims' rights as set forth in  
15 California constitution. At that time, and at all relevant times, CONCORD PD personnel had full  
16 knowledge of CONCORD PD’s mission and awareness of proper investigation protocol.

17 76. At that time, and at all relevant times, CONCORD PD Officers were aware of  
18 CONCORD PD’s mission and their role as law enforcement personnel.

19 77. By failing to discipline or act, Swanger endorsed or approved the unconstitutional  
20 conduct of individual officers.

21 78. Plaintiff requested CONCORD PD’s policy and procedures regarding sexual  
22 assault investigation but no such thing existed.

23 79. In January 2020 CCDA declined to file charges against Weamer.

24 80. Given the way how law enforcement personnel responded to rapes, Plaintiff asked  
25 herself “Can you imagine how many victims didn’t get the justice they deserved?”

26 81. On Jan 7, 2020 during a recorded phone call conversation Gleason told Plaintiff  
27 this was a he said she said case by ignoring the objective evidence. Gleason announced that there  
28 was NO EVIDENCE to prove it was not consensual by invaliding Plaintiff’s testimony. By

1 intentionally ignoring the context Gleason falsely told Plaintiff that the jury would interpret it as  
2 rough sex and Plaintiff came forward because she was upset about Weamer chasing other girls.  
3 Gleason took every word of Weamer as true even though a normal person, through inference,  
4 could easily tell Weamer was lying. By ignoring the fact that Plaintiff texted Weamer he set her  
5 up Gleason credited Weamer because Weamer falsely said Plaintiff enjoyed the sex and put his  
6 penis in her vagina.

7 82. At the end of the phone conversation with Gleason Plaintiff requested to speak  
8 with her supervisor, Walpole.

9 83. At that time, and at all relevant times, Gleason was aware of CCDA's mission and  
10 her role as a prosecutor.

11 84. In Jan 2020 Plaintiff notified Becton of the constitution violation.

12 85. On Jan 8, 2020 during a recorded phone call conversation Walpole declared that it  
13 was their filing standard to file cases they believed they could win. "We wouldn't file cases if we  
14 don't get a guilty verdict." "It's a big hurdle." Walpole also announced that they would need  
15 strong corroboration despite it was not required by law.

16 86. In 2018 in California the conviction rate of violent offenses is 56.8% ([https://data-](https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Crime%20In%20CA%202018%2020190701.pdf)  
17 [openjustice.doj.ca.gov/sites/default/files/2019-](https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Crime%20In%20CA%202018%2020190701.pdf)  
18 [07/Crime%20In%20CA%202018%2020190701.pdf](https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Crime%20In%20CA%202018%2020190701.pdf)). However, Walpole flat out told Plaintiff  
19 "We only file cases we believe we can win. That's our filing standard."

20 87. When Plaintiff questioned about the use of expert witness Walpole falsely told her  
21 many times jury would disagree with the expert. Despite stereotype about how victims should  
22 behave is unlawful discrimination and it's a prosecutor's job to select unbiased jury Walpole  
23 falsely told Plaintiff the jury would say "If I was in her shoes, I wouldn't have had the  
24 relationship."

25 88. By invaliding Plaintiff's testimony Walpole valued Weamer's version because  
26 Weamer falsely said Plaintiff put his penis inside her and being upset about Weamer seeing other  
27 women was Plaintiff's motive to pursue this case. Walpole also declared this was part of the  
28 #Metoo movement.

1           89.     Although Plaintiff's motive is not a crime element Walpole attacked Plaintiff's  
2 motive of coming forward was the suspect was seeing other women. Motive of victims of other  
3 assaults would not be attacked as a target.

4           90.     The entire time Walpole tried his best to derail Plaintiff from pursuing the truth  
5 and justice, reflecting Walpole's conscious choice not to overcome common defenses. Rather  
6 than uphold the law, educate the jury, and overcome common defenses, Walpole chose to act as  
7 the suspect's advocate.

8           91.     At that time, and at all relevant times, Walpole was aware of CCDA's mission and  
9 his role as a prosecutor and supervisor.

10          92.     On Jan 25, 2020 Plaintiff filed a complaint with CCDA regarding the  
11 constitutional violation.

12          93.     By failing to discipline or act, Contra Costa County and Becton endorsed or  
13 approved the unconstitutional conduct of individual employees.

14          94.     Plaintiff requested CCDA's policy and procedures regarding sexual assault  
15 prosecution but no such thing was available.

16          95.     On Feb 10, 2020 during a recorded phone call conversation Passaglia told Plaintiff  
17 this case was fairly old regardless of no statute of limitation for rape. Despite corroboration is not  
18 require by law Passaglia announced "We don't have any opportunity to do any investigation or  
19 find any corroboration".

20          96.     Passaglia went on and told Plaintiff "It's not enough for me to say conclusively  
21 what exactly occurred" and such statement is completely opposite to the prosecution guideline set  
22 forth by NDAA. Despite sexual assault cases rarely have witnesses Passaglia declared "There is  
23 no opportunity to interview any witnesses and talk to people in real time."

24          97.     On Feb 15, 2020 Plaintiff emailed Masterson and encourage her to follow the  
25 prosecution guidelines but Plaintiff's email was ignored, reflecting SDA's dismissive attitude.

26          98.     At that time, and at all relevant times, Passaglia and Masterson were aware of  
27 SDA's mission and their role as a prosecutor.

28          99.     In Feb 2020 Plaintiff filed complaint with Ravitch but no action was taken.

1       100. By failing to discipline or act, Sonoma County and Ravitch endorsed or approved  
2 the unconstitutional conduct of individual employees.

3       101. Plaintiff requested SDA's prosecution policy for sexual assault but no such thing  
4 exists as Missoula County Attorney's Office does. <MISSOULA COUNTY ATTORNEY'S  
5 OFFICE SEXUAL ASSAULT POLICY & PROCEDURE MANUAL> ([https://dojmt.gov/wp-](https://dojmt.gov/wp-content/uploads/SEXUAL-ASSAULT-POLICY-AND-PROCEDURE-MANUAL.pdf)  
6 [content/uploads/SEXUAL-ASSAULT-POLICY-AND-PROCEDURE-MANUAL.pdf](https://dojmt.gov/wp-content/uploads/SEXUAL-ASSAULT-POLICY-AND-PROCEDURE-MANUAL.pdf))

7       102. The American Bar Association standard related to Prosecution Function says that  
8 the duty of the prosecutor is to seek justice, not merely to convict. Giving false statement to a  
9 victim is not prosecutorial in nature. Instead, CCDA and SDA Officials were afraid to lose the  
10 case and affect their personal performance. In another words CCDA and SDA Officials acted in  
11 their own interest and personal capacity during the employment as prosecutor.

12       103. The life-long devastating harm caused by sexual assault is profound and  
13 exacerbated by Defendants' deprivation of Plaintiff's fundamental rights secured to her by laws.  
14 The depth of trauma inflicted upon Plaintiff has a significant impact not only on the victim, but  
15 on the entire community because of the scope and lasting effect of the harm, and the fact that  
16 unpunished perpetrators are encouraged to repeat their crimes.

17       104. Plaintiff finally experienced the despair and emotional distress of living with the  
18 knowledge that her rapist would never be held accountable for his act, and nothing was stopping  
19 him from assaulting others. Plaintiff's rapist was well protected by law enforcement while she  
20 was not and he walks free with the confidence that he can rape other women with no  
21 repercussions. A rapist's words prevail and conquer in every aspect but none of Plaintiff's words  
22 ever counts.

23       105. The depth of Defendants' discriminatory treatment of sexual assault victims is all  
24 the more troubling given the recent expansion of societal awareness of and sensitivity to sexual  
25 assault. The discriminatory treatment and deprivation of equal protection of the laws by  
26 Defendants caused significant emotional injury to Plaintiff separate and apart from the harm she  
27 suffered as a rape victim.

28       106. Upon information and belief, critical decision-making regarding the distribution of

resources and staffing, training of officers, detectives, and other personnel, treatment of victims who come forward, and other policies and/or practices that led to the discriminatory denial and/or hostile provision of services to Plaintiff were made by Defendants Swanger, Becton, Ravitch, and/or among others.

107. Failure of CONCORD PD, CCDA and SDA to adhere to mission statement and training, permits and facilitates the unlawful conduct described above. Accountability systems of CONCORD PD, CCDA and SDA, do not sufficiently detect or prevent unlawful conduct, CONCORD PD, CCDA and SDA did not properly consider and resolve complaints from Plaintiff. Early warning system of CONCORD PD, CCDA and SDA does not adequately identify or effectively respond to a need for intervention to prevent future violations of constitutional rights of sexual assault victims.

108. Plaintiff's complaints were not formally investigated. CONCORD PD, CCDA and SDA minimized the seriousness of Plaintiff's complaints by failing to investigate as a serious complaint that could potentially result in discipline.

109. At its core, the current organizational structure of CONCORD PD, CCDA, and SDA is not capable of adequately addressing the victimization and lifetime damage inflicted on sexual assault victims or to stop repeat perpetrators, particularly those who sexually assault women they know or who use drugs/alcohol to commit their sexual assaults.

<Educating Juries in Sexual Assault Cases>

[http://www.ncdsv.org/images/AEquitas\\_EducatingJuriesInSexualAssaultCasesPart1\\_7-2010.pdf](http://www.ncdsv.org/images/AEquitas_EducatingJuriesInSexualAssaultCasesPart1_7-2010.pdf)

110. Not having any written policy and procedure for investigation and prosecution of a heinous crime – sexual assault, suggests that Concord PD, CCDA, and SDA disregard the known or obvious consequence and it is a conscious choice.

### **FIRST CAUSE OF ACTION**

#### **Equal Protection (42 U.S.C. § 1983)**

#### **Against all Defendants**

111. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in

1 the paragraphs above.

2 112. The Fourteenth Amendment prohibits the states from denying to all persons within  
3 its jurisdiction the equal protection of the laws. Denying includes inaction as well as action, and  
4 denying the equal protection of the laws includes the omission to protect.

5 113. “The purpose of the equal protection clause of the Fourteenth Amendment is to  
6 secure every person within the State’s jurisdiction against intentional and arbitrary discrimination,  
7 whether occasioned by express terms of a statute or by its improper execution through duly  
8 constituted agents.” *Sioux City Bridge Co. v. Dakota Cty.*, 260 U.S. 441, 445 (1923) (quoting  
9 *Sunday Lake Iron Co. v. Wakefield Twp.*, 247 U.S. 350, 352 (1918)). Discriminatory policing  
10 occurs when police officers and departments selectively enforce the law - or fail to enforce the  
11 law - based on arbitrary factors.

12 114. Equal protection rights are violated when (1) a person is a member of an  
13 identifiable class; (2) that person is intentionally treated differently from others similarly situated;  
14 and (3) there is no rational basis for the difference in treatment. Discriminatory intent implies  
15 more than intent as volition or intent as awareness of consequences. It implies that the decision  
16 maker selected or reaffirmed a particular course of action at least in part because of – not merely  
17 in spite of – its adverse effects upon an identifiable group.

18 115. Plaintiff is a member of an identifiable group. As pled above, she is a rape victim  
19 who has been treated differently based upon illegitimate stereotypes and archaic notions of sexual  
20 assault. She further alleges that Defendants acted with discriminatory intent in discounting,  
21 invalidating, and dismissing her allegation.

22 116. Defendants’ omissions and actions described above, when analyzed as a whole  
23 using a contextualist approach, permit the inference that Plaintiff’s individual case was treated  
24 differently without a rational basis and showcase Defendants’ custom and practice of intentional  
25 discriminatory under-policing and selective under-enforcement. Defendants intentionally provide  
26 unequal protection to sexual assault victims in the form of failing to respond with equal effort to  
27 sexual assault victims the same as Defendants do with victims of other crimes.

28 117. There was no reason for the misconducts and ill treatments other than animus

1 toward victims of sexual assault. Such conducts are not at all related to any governmental purpose  
2 and they are a far deviation from commonly accepted procedures. It's not a single word, not a  
3 single act, but a series of conducts that demonstrate Defendants' pattern of deliberate indifference  
4 and unconstitutional practice to discourage the vigorous prosecution of violent crimes against  
5 sexual assault victims.

6 118. An individual who alleges that a state actor intentionally treated her differently  
7 than other similarly-situated individuals and alleges that there was no rational basis for the  
8 difference in treatment, states a viable Fourteenth Amendment Equal Protection Claim.

9 119. Plaintiff has been deprived of her rights of equal protection under the law – and as  
10 of the date of this filing, continues to be deprived of these rights – on account of sexual assault, in  
11 violation of the Fourteenth Amendment to the United States Constitution, in that she has been  
12 afforded less favorable terms and conditions than victims of other assaults/crimes, and continues  
13 to be afforded less favorable terms and conditions. As a consequence, Plaintiff, as a victim of  
14 sexual assault, obtained less protective resources of the state compared with victims of other  
15 assaults/crimes.

16 120. The devaluation of sexual assaults burdens a particular set of victims. The laws  
17 against violence were not and will not be uniformly enforced. Because the vast majority of  
18 victims of sexual assault are women, discriminatory practice has an unjustified disparate impact  
19 on women. Rape is the most under-reported crime. 63% of sexual assaults are not reported to  
20 police. <Statistics about sexual violence>

21 [https://www.nsvrc.org/sites/default/files/publications\\_nsvrc\\_factsheet\\_media-packet\\_statistics-](https://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf)  
22 [about-sexual-violence\\_0.pdf](https://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf) )

23 121. Discrimination against rape victims puts victims at a unique disadvantage in the  
24 criminal justice system, decreasing the rate of reporting rape and increasing the rate of claims  
25 withdrawn by victims. <Rape and Sexual Assault in the Legal System>

26 [https://www.womenslawproject.org/wp-content/uploads/2016/04/Rape-and-Sexual-Assault-in-](https://www.womenslawproject.org/wp-content/uploads/2016/04/Rape-and-Sexual-Assault-in-the-Legal-System-FINAL.pdf)  
27 [the-Legal-System-FINAL.pdf](https://www.womenslawproject.org/wp-content/uploads/2016/04/Rape-and-Sexual-Assault-in-the-Legal-System-FINAL.pdf) )

28 122. The acts of Defendants were unnecessary, objectively unreasonable and malicious.



123. As a proximate and foreseeable result of Defendants' violations of Plaintiff's Fourteenth Amendment rights, Plaintiff has suffered, is suffering, and will continue to suffer injuries, including but not limited to continued trauma, dissociation, humiliation, emotional distress, anxiety, depression, stigma, and embarrassment.

## SECOND CAUSE OF ACTION

## Gender-based Civil Conspiracy (42 U.S.C. § 1985)

### Against all Defendants

124. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the paragraphs above.

125. Starting on Oct 18, 2019 Defendants, in whole or part, conspired among themselves and with others for the purpose of depriving, directly or indirectly, Plaintiff of equal protection under the law with the intent to deny her right to be treated fairly and equally.

126. The conduct described above, when viewed in total, is conscience shocking. Each member of this conspiracy shared the same conspiratorial objective.

127. Defendants engaged in a conspiracy among themselves and with others based on discriminatory animus for the purpose of depriving, directly or indirectly, Plaintiff's right to equal protection under the law in violation of 42 U.S.C. § 1985(3), with the object of that conspiracy being to conceal the fact that the complaints of crime made by female victims, including Plaintiff, are less important to CONCORD PD, CCDA, and SDA than complaints made by similarly-situated male rape victims.

128. Defendants engaged in oral, written, and electronic communications, and/or endorsement and support among themselves and with others regarding: a) their agreement to treat Plaintiff differently; b) actions taken to deter Plaintiff from pursuing the truth and justice; and c) their effort to support each other's unconstitutional actions and discourage vigorous prosecution of sex crimes against women.

129. Defendants conspired among themselves and with others to deprive Plaintiff of equal protection of the laws as alleged in this Complaint based on animosity toward Plaintiff as a

1 woman reporting rape.

2 130. Defendants' series of omissions and actions described above, when analyzed as a  
3 whole using a contextualist approach, permit the inference that Defendants have a meeting of the  
4 minds to violate Plaintiff's constitutional rights.

5 131. Between January and February 2020 CCDA and SDA Officials made multiple  
6 untrue statements that were far departure from professional standards, jury instruction, and  
7 prosecution guidelines by employing their discriminatory policy towards female rape victims, in  
8 order to prevent Plaintiff from exercising her constitutional rights.

9 132. Defendants, in part or whole, directly or indirectly, have used their control and  
10 influence to reduce the number of perpetrators held accountable for rapes.

11 133. As a result of said conspiracy Plaintiff has suffered, is suffering, and will continue  
12 to suffer injuries, including but not limited to continued trauma, humiliation, emotional distress,  
13 anxiety, depression, stigma, and embarrassment.

14 134. Defendants' failure to prevent or aid in preventing a conspiracy under 42 U.S.C. §  
15 1985 of which the Defendants had knowledge and the power to prevent is also in violation of 42  
16 U.S.C. § 1986.

17 135. The acts of Defendants were unnecessary, objectively unreasonable and malicious.  
18

19 **THIRD CAUSE OF ACTION**

20 **Municipal Liability for Unconstitutional Policies, Customs, and Practices (42 U.S.C. § 1983)**

21 **Against all Defendants**

22 136. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in  
23 the paragraphs above.

24 137. On and for some time prior to Oct 18, 2019 (and continuing to the present date)  
25 Defendants deprived Plaintiff of the rights secured to her by the Fourteenth Amendments to the  
26 United States Constitution, in that said Defendants and their supervising and managerial  
27 employees, agents, and representatives, acting with gross negligence and with reckless and  
28 deliberate indifference to the rights of the public in general, and of Plaintiff, and of persons in her

1 class, situation and comparable position in particular, knowingly maintained, enforced and  
2 applied officially recognized policies, practices or customs of:

3 (a) Employing and retaining law enforcement personnel, including , Concord PD Officers,  
4 CCDA and SDA Officials, and DOES 1-10, who had dangerous propensities for  
5 discriminating against rape victims by failing to follow mission of CONCORD PD,  
6 CCDA and SDA, and/or well established laws;

7 (b) Inadequately supervising, training, controlling, assigning, and disciplining officers,  
8 detectives, and other personnel, who the City, Contra Costa and Sonoma County knew or  
9 in the exercise of reasonable care should have known had the aforementioned propensities  
10 and character traits;

11 (c) Failing or refusing to competently and impartially investigate allegations of  
12 misconducts, failing or refusing to enforce established administrative procedures, to  
13 ensure victims and community safety, despite Defendants' knowledge of abuse and  
14 misconduct;

15 (d) Having and maintaining an unconstitutional custom of discriminatory under-policing,  
16 selective under-enforcement, favoritism toward rapists, and/or hostile provision of  
17 services to Plaintiff, which also is demonstrated by inadequate training regarding these  
18 subjects, and Defendants have no valid justification for such policies, customs, and  
19 practice. The practices of Defendants, were done with a deliberate indifference to  
20 individuals' safety and rights; and

21 (e) Fostering and encouraging an atmosphere of lawlessness, abuse and unconstitutional  
22 misconduct, as to encourage their personnel to believe that discriminatory under-policing,  
23 selective under-enforcement, and illegal searches and seizures would be tolerated, and to  
24 believe that unlawful acts would be overlooked without discipline or other official  
25 ramifications.

26 138. Defendants have demonstrated their deliberate indifference to widespread law  
27 enforcement abuses by failing and refusing to impartially investigate personnel complaints,  
28 failing to discipline or prosecute personnel who commit acts of dishonesty and misconduct.

139. By reason of the aforementioned custom and practices of Defendants, Plaintiff was severely injured and subjected to lifetime pain and suffering.

140. Defendants, together with various other personnel, whether named or unnamed, had either actual or constructive knowledge of the deficient policies, practices and customs alleged in the paragraphs above. Despite having knowledge as stated above these Defendants condoned, tolerated and through actions and inactions thereby ratified such policies. Said Defendants also acted with deliberate indifference to the foreseeable effects and consequences of these practice with respect to the constitutional rights of Plaintiff, and other individuals similarly situated.

141. By perpetrating, tolerating and ratifying the outrageous conduct and other wrongful acts, Defendants acted with an intentional, reckless, and callous disregard for Plaintiff's constitutional rights. Defendants, each of their actions were willful, wanton, oppressive, malicious, fraudulent, and extremely offensive and unconscionable to any person of normal sensibilities.

142. Furthermore, the practice implemented and maintained and still tolerated by Defendants, were affirmatively linked to and were a significantly influential force behind the injuries of Plaintiff. Such unconstitutional custom is and will be a threat to justice and community safety.

#### FOURTH CAUSE OF ACTION

**Municipal Liability – Failure to Train, Supervise, and/or discipline (42 U.S.C. § 1983)**

**Against all Defendants**

143. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the paragraphs above.

144. On information and belief, the overwhelming majority of law enforcement personnel who handle sexual assaults remain woefully untrained, and fundamentally biased against sexual assault victims, making assumptions about why and when sexual assault victims behave in certain ways and excusing perpetrator conduct as acceptable and/or “normal” behavior.

1           145. While acting under the color of state law and within the course and scope of their  
2 employment, Concord PD Officers, CCDA and SDA Officials, and DOES 1-10's unconstitutional  
3 practice, deprived Plaintiff's rights secured to her by the Fourteenth Amendment, including her  
4 right to be free from discrimination.

5           146. The training **policies** of CONCORD PD and CCDA were not adequate to train  
6 their personnel, including but not limited to, Concord PD Officers, CCDA and SDA Officials,  
7 and DOES 1-10, with regards to understanding crime elements, employing investigative tools,  
8 conducting reasonable searches and seizures, prosecuting sexual assaults, selecting unbiased jury,  
9 and treating victims equally and fairly. As a direct result, CONCORD PD and CCDA personnel,  
10 including, Concord PD Officers, CCDA and SDA Officials, and DOES 1-10, are not able to  
11 handle the usual and recurring situations with which they must deal, including treating every  
12 crime victim fairly and respectfully. These inadequate training policies existed prior to the date of  
13 this incident and continue to this day.

14           147. Defendants were deliberately indifferent to the known or obvious consequences of  
15 their failure to train and/or supervise their personnel, including, Concord PD Officers, CCDA and  
16 SDA Officials, and DOES 1-10, adequately with regards to understanding crime elements,  
17 employing investigative tools, conducting reasonable searches and seizures, prosecuting sexual  
18 assaults, selecting unbiased jury, and treating victims equally and fairly. This inadequate training  
19 includes failing to teach personnel to properly handle sexual assault investigation and  
20 prosecution.

21           148. Defendants were aware that failure to implement some sort of training and/or  
22 supervision with regards to their discriminatory and unlawful practice would result in continuing  
23 to have numerous unreasonable officers involved violation of sexual assault victims'  
24 constitutional rights annually.

25           149. The failure of Defendants to provide adequate training and/or supervision with  
26 regards to understanding crime elements, employing investigative tools, conducting reasonable  
27 searches and seizures, prosecuting sexual assaults, selecting unbiased jury, and treating victims  
28 equally and fairly, caused the deprivation of the Plaintiff's rights by, Concord PD Officers,

1 CCDA and SDA Officials, and DOES 1-10. In other words, Defendants' failure to train and/or  
2 supervise is so closely related to the deprivation of the Plaintiff's rights as to be the moving force  
3 that caused the ultimate injury.

4 150. By failing to achieve adequate training and/or supervision, Concord PD Officers,  
5 CCDA and SDA Officials, and DOES 1-10, acted with an intentional, reckless, and callous  
6 disregard for Plaintiff's constitutional rights. Concord PD Officers, CCDA and SDA Officials,  
7 and DOES 1-10, each of their actions was willful, wanton, oppressive, malicious, fraudulent, and  
8 extremely offensive and unconscionable to any person of normal sensibilities.

9  
10 **FIFTH CAUSE OF ACTION**

11 **Violation of Cal. Const. Art. I, § 7 – Equal Protection**

12 **Against all Defendants**

13 151. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in  
14 the paragraphs above.

15 152. Defendants violated Plaintiff's civil rights by having a widespread practice and/or  
16 custom of discriminatory under-policing and selective under-enforcement, when enforced, caused  
17 a constitutional deprivation to Plaintiff, although not authorized by written law or express  
18 municipal policy, was so permanent and well settled as to constitute a custom or usage with the  
19 force of law.

20 153. Defendants' custom was intentional and, when enforced, had a discriminatory  
21 impact on sexual assault victims. Plaintiff's case was not isolated incident. Plaintiff received  
22 disparate treatment relative to victims of other violent crimes. Defendants set out to make  
23 reporting and pursuing investigation of rapes as unpleasant and difficult as possible.

24 154. The constitutional injury inflicted by Defendants was caused by the persons with  
25 final policymaking authority at the City, Contra Costa and Sonoma County, CONCORD PD,  
26 CCDA, and SDA.

27 155. Defendants knew about the above-described conducts and facilitated them,  
28 approved them, condoned them, and/or turned a blind eye to the conducts and systematic failure.

156. The above-described conducts of Defendants constitute a violation of Article 1, § 7 of the California Constitution.

## SIXTH CAUSE OF ACTION

### **Violation of Cal. Const. Art. I, § 28 (b) – Victims’ Bill of Rights**

**Against all Defendants**

157. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the paragraphs above.

158. California's Constitution protects the rights of crime victims. Defendants have violated the rights of Plaintiff to be treated with fairness, respect, and dignity, by among other things:

- a. Subjecting Plaintiff to re-traumatization, demeaning and humiliating interrogation tactics, including inappropriately questioning her reactions without presence of victim advocate;
- b. Routinely and inappropriately impugning the credibility of sexual assault victims, including Plaintiff;
- c. Conducting illegal searches and seizures, with no reasonable cause;
- d. Telling Plaintiff that the crime perpetrated against her was not actually criminal;
- e. Treating Plaintiff like suspect, rather than victim;
- f. Willfully failing to inform Plaintiff of her rights as a crime victim; and
- g. Maliciously using coercion and purported reasons to deter Plaintiff from exercising her constitutional rights.

159. Defendants' conducts violated Plaintiff's rights that set forth in California Constitution she was entitled (a) to be treated with fairness and respect for her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal justice process. (b) to be informed of the rights enumerated in California Constitution Art. I, § 28 (b).

1 **SEVENTH CAUSE OF ACTION**

2 **Negligent Supervising, Disciplining, and Retaining Employees**

3 **Against all Defendants**

4 160. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in  
5 the paragraphs above.

6 161. Defendants customarily failed to properly supervise their officers and deputies,  
7 and address citizen complaints reflecting that they were deliberately indifferent to citizens'  
8 constitutional rights.

9  
10 **EIGHTH CAUSE OF ACTION**

11 **Intentional Infliction of Emotional Distress**

12 **Against all Defendants**

13 162. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in  
14 the paragraphs above.

15 163. Except for homicide, rape is the most serious violation of a person's body because  
16 it deprives the victim of both physical and emotional privacy and autonomy. As a rape victim,  
17 Plaintiff was particularly susceptible to emotional distress at that time but Defendants willfully  
18 engaged in acts and omissions alleged herein with a discriminatory intent or a reckless disregard  
19 for the probability of aggravating the emotional distress that Plaintiff was already suffering. Such  
20 ill treatment is not what Plaintiff came forward for. Plaintiff certainly didn't walk into a police  
21 station thinking her trauma would be lifted to another level by law enforcement personnel. Law  
22 enforcement personnel's response to sexual assault has made Plaintiff feel like being murdered  
23 would be better than being raped.

24 164. After Plaintiff gathered her courage to step forward and identify her assailant she  
25 has been re-traumatized again and again at the hands of law enforcement personnel. The trauma  
26 Plaintiff has experienced at the hands of Defendants prevented her from having any kind of  
27 normal life.

28 165. As a direct and proximate result of the Defendants' outrageous and unlawful



1 conducts as described herein, Plaintiff has suffered and/or continue to suffer loss of trust, comfort,  
2 protection, and support, humiliation, mental anguish, nervous shock, severe emotional distress,  
3 and other special and general damages in amounts according to proof.

4 166. Punitive damages should be assessed against Defendants for the purpose of  
5 punishment and for the sake of example.

6  
7 **NINTH CAUSE OF ACTION**

8 **Violation of Unruh Civil Rights Act (Cal. Civil Code § 51)**

9 **Against all Defendants**

10 167. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in  
11 the paragraphs above.

12 168. Cal. Civil Code § 51, also known as Unruh Civil Rights Act, states that all persons  
13 within the jurisdiction of this state are free and equal, and are entitled to the full and equal  
14 accommodations, advantages, facilities, privileges, or services in all business establishments of  
15 every kind whatsoever.

16 169. Defendants' policies, practices, and customs complained of herein violated  
17 Plaintiff's rights to be free from discrimination and unreasonable searches and seizures, rights to  
18 privacy, and victims' rights as secured by Article I, § 1, § 7, § 13, § 28(b) of the California  
19 Constitution and directly and proximately damaged Plaintiff as herein alleged, entitling Plaintiff  
20 to recover a minimum of \$4,000 for each and every offense pursuant to California Civil Code §  
21 52(a) and § 52.1, in addition to other damages.

22  
23 **DECLARATORY RELIEF SOUGHT**

24 170. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in  
25 the paragraphs above.

26 171. Plaintiff respectfully prays for a declaratory judgment that Defendants, and each of  
27 them, have engaged in a pattern or practice of conduct that violated Plaintiff's rights under the  
28 Fourteenth Amendment to the United States Constitution, Art. I, §§ 1, 7, 13, 28(b) of the

1 California Constitution, Cal. Civil Code § 52.1, and/or California common law.

2  
3 **INJUNCTIVE RELIEF SOUGHT**

4 172. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in  
5 the paragraphs above.

6 173. Plaintiff prays for a permanent injunction compelling Becton, Ravitch, and/or  
7 CCDA, SDA to file criminal charges against Weamer.

8 174. Plaintiff prays for a permanent injunction disbarring CHRISTOPHER WALPOLE,  
9 COLLEEN GLEASON, ANNE MASTERSON, and LAURA PASSAGLIA.

10 175. Plaintiff also prays that the Court issue a permanent injunction against Defendants  
11 ordering them to:

- 12 a. Properly train and supervise government employees handling sexual assault  
13 cases or evidence;
  - 14 b. Establish written policy and procedure manual for investigation and  
15 prosecution of sexual assaults;
  - 16 c. Require and enforce trauma-informed approaches to investigation and  
17 prosecution of sexual assault cases;
  - 18 d. Increase prosecution rate of sexual assault to 50%;
  - 19 e. Treat sexual assault cases with the same urgency and importance afforded to  
20 other types of crimes;
  - 21 f. Provide adequate resources for investigation and processing of sexual assault  
22 cases;
  - 23 g. Treat victims of sexual assault with the same respect and attention to their  
24 cases as victims of other crimes; and
  - 25 h. Accurately and publicly report data reflecting the number of sexual assaults  
26 reported, investigated, prosecuted, and processed to conclusion within the  
27 criminal justice system on a bi-annual basis.
- 28

1 **PRAYER**

2 WHEREFORE, Plaintiff prays judgment against Defendants and each of them, as follows:

3 AS TO EACH CAUSE OF ACTION AS APPLICABLE

- 4 1. For general damages according to proof;
- 5 2. For special damages according to proof;
- 6 3. For exemplary damages as provided by law, in an amount to be proved against each
- 7 individual Defendant;
- 8 4. For interest;
- 9 5. For civil penalties pursuant to Civil Code § 52;
- 10 6. For attorney's fees pursuant to 42 U.S.C. § 1988 and Civil Code §§ 52 and 52.1;
- 11 7. For reasonable costs of this suit;
- 12 8. For treble damages under Civil Code § 52.1;
- 13 9. For such other and further relief as the Court may deem just, proper, and appropriate.
- 14

15 **JURY TRIAL DEMANDED**

16 Plaintiff hereby demands a trial by jury for all issues so triable.

17

18 Dated: Mar 31, 2020

19 

20 \_\_\_\_\_

21 JANE DOE

22 Plaintiff in Pro Se

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## EXHIBITS TO COMPLAINT

### TABLE OF CONTENTS

Exhibit #	Document	Pages
1	Gov claim rejection letter from City of Concord	38
2	Gov claim rejection letter from County of Contra Costa	40
3	Gov claim rejection letter from County of Sonoma	42

EXHIBIT 1



CITY OF CONCORD  
1950 Parkside Drive, MS. 08  
Concord, California 94519-2578  
TEL: (925) 671-3160

OFFICE OF THE CITY ATTORNEY  
Telephone: (925) 671-3160



Susanne Meyer Brown  
City Attorney

Margaret Kotzebue  
Senior Assistant City Attorney

Joshua K. Clendenin  
Senior Assistant City Attorney

Lance Bayer  
Special Counsel

February 3, 2020

11151 Valley Boulevard, Suite 4886  
El Monte, CA 91734

*Re: Notice of Rejection of Claim against the City of Concord*

Dear Ms.

Pursuant to the authority vested in me by the City Council, you are hereby notified that the amended claim received January 16, 2020, which refers to an incident that took place on or about October 18, 2019, in an unknown amount, is hereby rejected in its entirety.

#### WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. This warning does not extend the statute of limitations involving any federal cause of action.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Very truly yours,

JOSHUA K. CLENDENIN  
Senior Assistant City Attorney

JKC:lrn





EXHIBIT 2



County Administrator  
Risk Management Division  
2530 Arnold Drive, Suite 140  
Martinez, California 94553

# Contra Costa County

Liability Claims (925) 335-1440  
Fax Number (925) 335-1421

March 5, 2020



P.O. Box 4886  
El Monte, CA 91734

Re: Claimant:  
Insured: Contra Costa County  
Date of Loss: 1/7/20  
Claim #: 86109

Dear

The above captioned matter was referred to my office for investigation and handling on behalf of the Contra Costa County Board of Supervisors and the District Attorney's Office. Please note that this letter is not intended to waive any statutory requirements as set forth in the California Government Code Sections 910-913, nor does our investigation of this matter constitute any admission of negligence or liability.

This letter is to provide you with a response to your claim that was received by the Clerk of the Board on 1/24/20. Your claim filing states that Deputy District Attorneys failed to perform their duties to prosecute a suspect accused of rape, and that your civil rights were violated by deterring you from pursuing justice.

Based on the information provided by the DA's office, several factors went into their decision to not pursue charges in this case. Those factors include that the sex appeared consensual, that there was no corroborating evidence that the rape occurred, and delayed reporting.

As you may know, District Attorneys have to weigh the probability of a conviction before they make the decision to move forward with prosecuting a case. In this case, the decision was made to decline prosecution as the probability of a conviction was extremely low.

Accordingly, the District Attorney's office acted within the scope of their appointed duties as criminal prosecutors. As such, there is no negligence on the part of the County and we must respectfully deny your claim. If you have any additional information you wish to discuss, please feel free to call me.



EXHIBIT 3





March 24, 2020

11151 Valley Blvd #4886  
El Monte, CA 91734

**Subject:** NOTICE OF REJECTION OF CLAIM  
**Claim of:**  
**Date of Incident:** 02/10/2020  
**Claim Number:** 2020006

Dear

The claim you presented to the Sonoma County Board of Supervisors on February 11, 2020 has been referred to the Risk Manager pursuant to Board of Supervisors Resolution No. 66798 and California Government Code Section 935.4.

NOTICE IS HEREBY GIVEN that said claim was rejected on March 24, 2020.

### WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See California Government Code Section 945.6

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

This notice applies only to causes of action arising under California law for which a claim is mandated by the California Government Tort Claims Act, California Government Code Sections 900 et seq. Other causes of action, including those arising under federal law, may have shorter time limitations for filing.

If you would like to discuss your claim further, please call Reesha Ruel in Risk Management at (707) 565-3563.

Sincerely,

Janell Crane  
Risk Manager





FILED

APR -9 2020

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTH DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JD

CV20 2432

Jane Doe

Case No. C

Plaintiff(s)

v.

City of Concord; et al

Defendant(s).

CONSENT OR DECLINATION  
TO MAGISTRATE JUDGE  
JURISDICTION

**INSTRUCTIONS:** Please indicate below by checking **one** of the two boxes whether you (if you are the party) or the party you represent (if you are an attorney in the case) choose(s) to consent or decline magistrate judge jurisdiction in this matter. Sign this form below your selection.

☐ **Consent to Magistrate Judge Jurisdiction**

In accordance with the provisions of 28 U.S.C. § 636(c), I voluntarily **consent** to have a United States magistrate judge conduct all further proceedings in this case, including trial and entry of final judgment. I understand that appeal from the judgment shall be taken directly to the United States Court of Appeals for the Ninth Circuit.

**OR**

☒ **Decline Magistrate Judge Jurisdiction**

In accordance with the provisions of 28 U.S.C. § 636(c), I **decline** to have a United States magistrate judge conduct all further proceedings in this case and I hereby request that this case be reassigned to a United States district judge.

DATE: 3/31/2020

NAME: Jane Doe

COUNSEL FOR  
(OR "PRO SE"):



*Signature*



FILED

APR -9 2020

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTH DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JANE DOE,  
Plaintiff,  
v.  
CITY OF CONCORD,  
Defendant.

Case No. 20-cv-02432-JD

**ORDER SETTING INITIAL CASE  
MANAGEMENT CONFERENCE  
AND ADR DEADLINES**

IT IS HEREBY ORDERED that this action is assigned to the Honorable James Donato. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order and all other documents specified in Civil Local Rule 4-2. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients shall familiarize themselves with that rule and with the material entitled "Dispute Resolution Procedures in the Northern District of California" on the Court ADR Internet site at <http://www.cand.uscourts.gov/adr>. A limited number of printed copies are available from the Clerk's Office for parties in cases not subject to the court's Electronic Case Filing program (ECF).

**CASE SCHEDULE – ADR MULTI-OPTION PROGRAM**



Date	Event	Governing Rule
4/9/2020	Complaint Filed	
6/18/2020	*Last day to: • meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan	<u>FRCivP 26(f) &amp; ADR L.R.3-5</u>
	• file ADR Certification signed by Parties and Counsel (form available at <a href="http://www.cand.uscourts.gov">http://www.cand.uscourts.gov</a> )	<u>Civil L.R. 16-8(b) &amp; ADR L.R. 3-5(b)</u>
7/2/2020	**Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report and file Case Management Statement per Standing Order re Contents of Joint Case Management Statement (also available at <a href="http://www.cand.uscourts.gov">http://www.cand.uscourts.gov</a> )	<u>FRCivP 26(a) (1)</u> <u>Civil L.R. 16-9</u>
7/9/2020	INITIAL CASE MANAGEMENT CONFERENCE (CMC) at 10:00 AM in:  Courtroom 11, 19th Floor Phillip Burton Federal Building 450 Golden Gate Avenue San Francisco, CA 94102	<u>Civil L.R. 16-10</u>

\* If the Initial Case Management Conference is continued, unless otherwise ordered this deadline is continued to 21 days in advance of the Initial Case Management Conference.

\*\* If the Initial Case Management Conference is continued, unless otherwise ordered this deadline is continued to 7 days in advance of the Initial Case Management Conference.



**STANDING ORDER FOR ALL JUDGES  
OF THE NORTHERN DISTRICT OF CALIFORNIA**  

---

**CONTENTS OF JOINT CASE MANAGEMENT STATEMENT**

All judges of the Northern District of California require identical information in Joint Case Management Statements filed pursuant to Civil Local Rule 16-9. The parties must include the following information in their statement which, except in unusually complex cases, should not exceed ten pages:

1. Jurisdiction and Service: The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's counterclaims, whether any issues exist regarding personal jurisdiction or venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.
2. Facts: A brief chronology of the facts and a statement of the principal factual issues in dispute.
3. Legal Issues: A brief statement, without extended legal argument, of the disputed points of law, including reference to specific statutes and decisions.
4. Motions: All prior and pending motions, their current status, and any anticipated motions.
5. Amendment of Pleadings: The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.
6. Evidence Preservation: A brief report certifying that the parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines"), and confirming that the parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. *See ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.*
7. Disclosures: Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26, and a description of the disclosures made.
8. Discovery: Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the discovery rules, a brief report on whether the parties have considered entering into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any identified discovery disputes.
9. Class Actions: If a class action, a proposal for how and when the class will be certified, and whether all attorneys of record for the parties have reviewed the Procedural Guidance for Class Action Settlements.
10. Related Cases: Any related cases or proceedings pending before another judge of this court, or before another court or administrative body.
11. Relief: All relief sought through complaint or counterclaim, including the amount of any damages sought and a description of the bases on which damages are calculated. In addition, any party from whom damages are sought must describe the bases on which it contends damages should be calculated if liability is established.





12. Settlement and ADR: Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including compliance with ADR L.R. 3-5 and a description of key discovery or motions necessary to position the parties to negotiate a resolution.
13. Consent to Magistrate Judge For All Purposes: Whether **all** parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment. \_\_\_ Yes \_\_\_ No
14. Other References: Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.
15. Narrowing of Issues: Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.
16. Expedited Trial Procedure: Whether this is the type of case that can be handled under the Expedited Trial Procedure of General Order No. 64 Attachment A. If all parties agree, they shall instead of this Statement, file an executed Agreement for Expedited Trial and a Joint Expedited Case Management Statement, in accordance with General Order No. 64 Attachments B and D.
17. Scheduling: Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.
18. Trial: Whether the case will be tried to a jury or to the court and the expected length of the trial.
19. Disclosure of Non-party Interested Entities or Persons: Whether each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-15. In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding. In any proposed class, collective, or representative action, the required disclosure includes any person or entity that is funding the prosecution of any claim or counterclaim.
20. Professional Conduct: Whether all attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.
21. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**STANDING ORDER FOR CIVIL CASES BEFORE JUDGE JAMES DONATO**

**INTRODUCTION**

This Standing Order is a guide to counsel and parties on pretrial practices in civil cases before Judge Donato. Counsel are required to read and comply with this order, this Court's Standing Orders for Discovery in Civil Cases and Civil Jury Trials, and the Northern District's Civil Local Rules.

**SERVICE OF THIS ORDER**

1. The parties are reminded that this Standing Order is included in the "Supplementary Material" that must be served in accordance with Civil Local Rules 4-2 and 16-2.

**CASE MANAGEMENT CONFERENCES**

2. Civil case management conferences are held on Thursdays at 10:00 a.m. in Courtroom 11, 19th Floor, United States Courthouse, 450 Golden Gate Avenue, San Francisco, California.

3. The parties must file a joint case management statement addressing the standardized items required by the Standing Order for All Judges of the Northern District of California: Contents of Joint Case Management Statements. The joint statement must be filed **at least seven calendar days** prior to the case management conference. Failure to file a joint statement must be accompanied by a signed declaration explaining the grounds for that failure. Absent good cause, the parties may be subject to sanctions. If either party is not represented by



1 counsel, separate statements may be filed, but only after the parties have made a good faith effort  
2 to prepare a joint statement.

3 4. In proposing a case schedule, the parties should agree on a trial date and work  
4 backward from that date to ensure adequate time for dispositive and *Daubert* motions, class  
5 certification motions, expert discovery and other events. As a general rule, counsel should budget  
6 no more than 18 months between the initial case management conference and trial. Counsel  
7 requesting longer pretrial periods must be prepared to justify that request at the initial case  
8 management conference. A trial date typically will be assigned at the initial case management  
9 conference. Once assigned, the trial date will not be changed or continued absent good cause in  
10 the interest of justice. Counsel and parties should assume that the trial date will not be moved.

11 5. For parties with counsel, each party must be represented at the case management  
12 conference by **lead counsel** prepared to address all pertinent matters and with authority to enter  
13 stipulations and make admissions. Failure of lead counsel to appear may result in sanctions. For  
14 parties without counsel, the party is expected to appear.

15 6. **Telephonic appearances are rarely permitted at case management conferences**  
16 **or motion hearings, except in exceptional circumstances and with the Court's prior approval**  
17 **issued at least three court days before the appearance date.** A conflict with another court date  
18 scheduled after a date set by this Court is not an exceptional circumstance. If a party or counsel  
19 has a good-faith basis for making a request to appear by telephone, it should file the request on the  
20 docket. Do not call the Court's Courtroom Deputy with those requests.

21 7. Any request to reschedule a case management conference must be made in writing,  
22 by stipulation if possible, not less than 10 calendar days before the conference date. Good cause  
23 must be shown. The conference date will not be rescheduled unless the Court grants the request.  
24 Parties cannot change the date by stipulation.

25 8. Pursuant to Federal Rule of Civil Procedure 26(d)(1), formal discovery should not  
26 be served or initiated by any party until after the parties have conferred as required by FRCP 26(f),  
27 except by stipulation or court order, or as provided for in FRCP 26(d)(2) or other rules. The Court  
28 expects that as soon as any party reasonably anticipates or knows of litigation, it will take the



1 necessary, affirmative steps to preserve evidence related to the issues presented by the action,  
2 including, without limitation, interdiction of any document destruction programs and any ongoing  
3 erasures of e-mails, voice mails, and other electronically-recorded material.

#### 4 **ELECTRONIC CASE FILING – CHAMBERS COPIES**

5 9. In addition to filing papers electronically, the parties are required to lodge for  
6 chambers **one** paper copy of the following: (a) complaints; (b) notices of removal; (c) case  
7 management conference statements; (d) stipulations; (e) all motion papers, including the opening,  
8 opposition, and reply briefs, as well as any supporting declarations and exhibits; and (f) discovery  
9 dispute letters that are filed pursuant to this Court’s Standing Order for Discovery in Civil Cases.  
10 Counsel should not submit chambers copies of any other documents that are electronically filed.

11 10. All chambers copies must be **double-sided**, three-hole punched at the left margin  
12 and marked with the ECF stamp (case number, document number, date and page number). These  
13 printed copies should be marked “Chambers Copy -- Do Not File” and placed in an envelope  
14 clearly labeled with the judge’s name and case number. The copies must be delivered in  
15 accordance with Civil Local Rule 5-1(e)(7). For voluminous filings, chambers would appreciate  
16 the use of binder clips rather than staples, or submission in three-ring binders. For documents  
17 with multiple attachments (*e.g.*, declarations with exhibits, requests for judicial notice and so on),  
18 please use side tabs that clearly separate each attached document. For pretrial materials, please  
19 follow this Court’s Standing Order for Civil Jury Trials.

#### 20 **SETTING MOTIONS FOR HEARING**

21 11. The civil law and motion calendar is called on Thursdays at 10:00 a.m. in  
22 Courtroom 11. Counsel need not request a motion hearing date and may notice non-discovery  
23 motions for any Thursday (excepting holidays) at 10:00 a.m. consistent with the 35-day notice  
24 period in Civil Local Rule 7-2(a) or other appropriate timeline. The Court may vacate the hearing  
25 and rule on the papers, or reset the hearing date as its calendar requires.

26 12. Counsel typically will have up to 15 minutes of oral argument time per side. The  
27 Court generally uses argument to ask questions and counsel are expected to be fully prepared to  
28





1 discuss applicable law and the facts in the case. Argument time will likely be extended for more  
2 complex cases and motions.

3 13. The Court has a strong commitment to supporting the development of our next  
4 generation of trial lawyers. Parties and senior counsel are encouraged to give newer practitioners  
5 the opportunity to argue in court. To that end, the Court will typically guarantee oral argument on  
6 any motion handled by a lawyer with 6 or fewer years of experience. The Court should be advised  
7 that a newer lawyer is doing the argument well in advance of the hearing date.

### 8 FORM OF SUBMISSIONS

9 14. On summary judgment motions, joint statements of undisputed facts are not  
10 required but are helpful if completely agreed upon. Separate statements of "undisputed facts" may  
11 **not** be filed. *See* Civil L.R. 56-2.

12 15. Reply papers should not raise new points that could have been addressed in the  
13 opening motion or brief. Sur-replies are not permitted. *See* Civil L.R. 7-3(d).

14 16. The title of a submission must be sufficiently descriptive to alert the Court to the  
15 relief sought; for example, please do not bury a request for continuance in the body of a  
16 memorandum.

17 17. All submissions filed with the Court must include the date and time of the hearing  
18 or conference on the cover sheet.

19 18. **Except for summary judgment and class certification motions, opening and**  
20 **opposition briefs may not exceed 15 pages, and reply briefs may not exceed 10 pages.** For  
21 summary judgment and class certification motions, opening and opposition briefs may not exceed  
22 25 pages, and reply briefs may not exceed 15 pages.

23 19. The parties should not ask the Court for an order where one is not needed, *e.g.*,  
24 stipulations of dismissal under FRCP 41(a)(1). Those requests will be disregarded.

25 20. The parties are reminded that they must inform the Court of any potentially related  
26 actions pending in this District or any other federal or state court in accordance with Civil Local  
27 Rules 3-12 and 3-13.  
28



**MOTION ADVICE**

21. Counsel should use their best judgment in deciding whether and when to bring a motion. Not every case warrants a motion to dismiss or summary judgment. For summary judgment in particular, counsel should carefully evaluate the extent to which fact disputes are genuine and material. Summary judgment motions that involve disputed material facts will usually be denied promptly in a short order.

22. As effective lawyers know, persuasive written advocacy is focused, plainly stated and supported by accurate and reliable authority. Counsel should spare no effort to ensure that their papers are succinct and clear, and should present their arguments in descending order of strength. Arguments buried in footnotes or raised with little authority or discussion will generally not be considered by the Court. For example, an argument that the Court lacks personal jurisdiction over a defendant or that a party lacks standing should not be raised in a footnote or a short paragraph at the end of a brief. If counsel believes a serious question or issue should be decided by the Court, counsel should argue it appropriately.

23. All case citations and factual statements must be completely accurate. A citation to a case, statute or other authority is counsel's representation to the Court that the authority stands for the proposition asserted and is good law. A quotation of a case or other authority is counsel's representation that the quoted language is complete and present in the authority cited. Counsel must ensure that use of ellipses or elisions in quotes does not mislead the Court or misrepresent the substance of the holding or other authority. Counsel's representations of facts are subject to the same requirements of completeness and accuracy. Misrepresentations of law or fact, however subtle, may result in sanctions and a referral to the District's Standing Committee on Professional Conduct.

**DISCLOSURES**

24. FRCP 26 requires certain automatic disclosures and requires them to be made in a timely manner. Under FRCP 37(c), materials that are undisclosed or disclosed late will likely be excluded from use at trial or summary judgment unless permitted otherwise by the Court.



**SEALED DOCUMENTS**

25. Any party seeking to file a document under seal must carefully review and comply with Civil Local Rule 79-5, except as that Rule is modified here for civil cases before Judge Donato.

26. The declaration and proposed order required by Civil Local Rule 79-5(d)(1) must establish, with reference to appropriate authority, that each of the following requirements is met:

a. The document or document portion is “privileged, protectable as a trade secret or otherwise entitled to protection under the law.” Civil L.R. 79-5(b). (Note that “[r]eference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable.” Civil L.R. 79-5(d)(1)(A).)

b. The “strong presumption of access to judicial records” may be rebutted under the appropriate legal standard, *i.e.*, the “good cause” or “compelling reasons” standard. *See Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178-82 (9th Cir. 2006) (discussing “good cause” and “compelling reasons” standards with respect to dispositive and non-dispositive motions). The declaration and proposed order must identify the appropriate standard and articulate why the materials to be sealed satisfy that standard. The reasons provided must be specific to the portions of the document sought to be sealed; “[s]imply mentioning a general category of privilege, without any further elaboration or any specific linkage with the documents, does not satisfy the burden.” *Id.* at 1184. Generic, non-specific reasons are not sufficient under either standard. *See id.* at 1180.

27. Any proposed order under Civil Local Rule 79-5(d)(1)(B) must include in the table for each item sought to be sealed the filer’s reasons for seeking sealing of the material, along with citations to the relevant declarations.

28. Any declaration by a Designating Party under Civil Local Rule 79-5(e)(1) must include a **new proposed order in the tabular format required by Civil Local Rule 79-5(d)(1)(B)** that includes the Designating Party’s reasons for sealing the material. In addition, any declaration by a Designating Party under Civil Local Rule 79-5(e)(1) that seeks less extensive



1 sealing than its associated administrative motions to seal must be accompanied by **revised**  
2 **redacted and unredacted versions of the documents sought to be sealed** that comply with the  
3 requirements of Civil Local Rule 79-5(d)(1)(C) and (D), including the requirement that the  
4 portions sought to be sealed must be clearly marked on the unredacted version.

5 29. Any declaration, whether under Civil Local Rule 79-5(d)(1)(A) or (e)(1), that  
6 claims confidentiality obligations to a non-party as a basis for sealing a document or a portion of a  
7 document must be served on the non-party as set forth in Civil Local Rule 79-5(e). The non-party  
8 must also be notified that it must comply with the procedures set forth in that rule for Designating  
9 Parties, except that the non-party will have four days from service of the declaration -- rather than  
10 four days from the filing of the administrative motion to seal -- to file a declaration under Civil  
11 Local Rule 79-5(e)(1).

12 30. All portions of documents sought to be sealed must be clearly marked on the  
13 unredacted versions of documents submitted to the Court, as required by Civil Local Rule 79-  
14 5(d)(1)(D). The Court emphasizes this requirement, because it is usually ignored.

15 31. For cases where voluminous or multiple administrative motions to seal would be  
16 filed if normal procedures were followed, parties (and any non-parties with potentially sealable  
17 information) must, upon the completion of briefing, jointly file a new, combined administrative  
18 motion to seal for all requests where sealing is unopposed. If any requests to seal are opposed,  
19 each party or non-party making an opposed request should file a single combined administrative  
20 motion to seal covering all of their opposed requests. If the parties anticipate that this paragraph  
21 will apply to a round of briefing, they may indicate in the initial motion to file under seal that  
22 accompanies a brief or other document as it is lodged under seal on the docket, that a more  
23 fulsome and revised motion to seal will be forthcoming after the completion of briefing pursuant  
24 to this paragraph of the Standing Order. The later combined motion to seal that is filed should  
25 clearly identify the docket numbers of the prior motions to seal that are superseded by the  
26 combined motion. If the Court determines that the parties should have followed this procedure but  
27 did not, it will deny the motions to seal without prejudice.  
28





**COMMUNICATIONS WITH CHAMBERS**

32. Please do not send any letters to the Court except for discovery disputes as detailed in the Court's Standing Order for Discovery in Civil Cases. When corresponding with the Court by letter, always identify the party you represent. **Do not messenger anything directly to chambers.** Deliveries must be directed to the Clerk's office and are never accepted by chambers personnel.

33. You may contact the Courtroom Deputy, Lisa Clark, at (415) 522-2066 with appropriate inquiries. Except for the letters described above, please do not attempt to make contact by telephone or any other ex parte means with chambers staff.

**COURTROOM CONDUCT**

34. Counsel and parties are required to conduct themselves with the highest level of decorum and respect for each other and Court and chambers personnel while in the courtroom. Cell phones and all other electronic devices must be turned off; no texting, e-mailing, or other electronic communications are permitted. While sitting in the gallery, counsel and parties should avoid conversation unless absolutely necessary for the appearance. Once a case is called and counsel appear, all communications must be directed only to the Court. Counsel shall not address each other directly unless the Court expressly permits them to do so. All statements and citations made to the Court during oral argument will be held to the same standards stated above in Paragraph 23.

**CROSS REFERENCE TO OTHER STANDING ORDERS**

35. The Court has separate standing orders for civil jury trials, discovery in civil cases, and patent cases. They are available for review at the website for the United States District Court for the Northern District of California at [www.cand.uscourts.gov/jdorders](http://www.cand.uscourts.gov/jdorders).

**IT IS SO ORDERED.**

Dated: January 5, 2017

  
\_\_\_\_\_  
JAMES DONATO  
United States District Judge

